

UTILITIES CODE  
TITLE 2. PUBLIC UTILITY REGULATORY ACT  
SUBTITLE B. ELECTRIC UTILITIES  
CHAPTER 35. ALTERNATIVE ENERGY PROVIDERS

SUBCHAPTER A. COMPETITION AND TRANSMISSION ACCESS IN THE WHOLESALE  
MARKET

Sec. 35.001. DEFINITION. In this subchapter, "electric utility" includes a municipally owned utility and an electric cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 16, eff. Sept. 1, 1999.

Sec. 35.002. RIGHT TO COMPETE AT WHOLESALE. A provider of generation, including an electric utility affiliate, exempt wholesale generator, and qualifying facility, may compete for the business of selling power.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.003. PURCHASE FROM AFFILIATE; UNDUE PREFERENCE PROHIBITED. (a) An electric utility may purchase power from an affiliate in accordance with this title.

(b) An electric utility may not grant an undue preference to a person in connection with the utility's purchase or sale of electric energy at wholesale or other utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.004. PROVISION OF TRANSMISSION SERVICE. (a) An electric utility or transmission and distribution utility that owns or operates transmission facilities shall provide wholesale transmission service at rates and terms, including terms of access, that are comparable to the rates and terms of the utility's own use of its system.

(b) The commission shall ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service for qualifying

facilities, exempt wholesale generators, power marketers, power generation companies, retail electric providers, and other electric utilities or transmission and distribution utilities.

(c) When an electric utility, electric cooperative, or transmission and distribution utility provides wholesale transmission service within ERCOT at the request of a third party, the commission shall ensure that the utility recovers the utility's reasonable costs in providing wholesale transmission services necessary for the transaction from the entity for which the transmission is provided so that the utility's other customers do not bear the costs of the service.

(d) The commission shall price wholesale transmission services within ERCOT based on the postage stamp method of pricing under which a transmission-owning utility's rate is based on the ERCOT utilities' combined annual costs of transmission divided by the total demand placed on the combined transmission systems of all such transmission-owning utilities within a power region. An electric utility subject to the freeze period imposed by Section 39.052 may treat transmission costs in excess of transmission revenues during the freeze period as an expense for purposes of determining annual costs in the annual report filed under Section 39.257. Notwithstanding Section 36.201, the commission may approve wholesale rates that may be periodically adjusted to ensure timely recovery of transmission investment. Notwithstanding Section 36.054(a), if the commission determines that conditions warrant the action, the commission may authorize the inclusion of construction work in progress in the rate base for transmission investment required by the commission under Section 39.203(e).

(e) The commission shall ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive. In this subsection, "ancillary services" means services necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services as the commission may determine by rule. On the introduction of customer choice in the

ERCOT power region, acquisition of generation-related ancillary services on a nondiscriminatory basis by the independent organization in ERCOT on behalf of entities selling electricity at retail shall be deemed to meet the requirements of this subsection. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 17, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 295, Sec. 1, eff. June 18, 2003.

Sec. 35.005. AUTHORITY TO ORDER TRANSMISSION SERVICE. (a) The commission may require an electric utility to provide transmission service at wholesale to another electric utility, a qualifying facility, an exempt wholesale generator, or a power marketer and may determine whether terms for the transmission service are reasonable.

(b) The commission may require transmission service at wholesale, including the construction or enlargement of a facility.

(c) The commission may not issue a decision or rule relating to transmission service that is contrary to an applicable decision, rule, or policy statement of a federal regulatory agency having jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 18, eff. Sept. 1, 1999.

Sec. 35.006. RULES RELATED TO WHOLESALE TRANSMISSION SERVICE, RATES, AND ACCESS. (a) The commission shall adopt rules relating to wholesale transmission service, rates, and access. The rules:

(1) must be consistent with the standards in this subchapter;

(2) may not be contrary to federal law, including any applicable decision, rule, or policy statement of a federal regulatory agency having jurisdiction;

(3) must require transmission services that are not less than the transmission services the Federal Energy Regulatory Commission may require in similar circumstances;

(4) must require that an electric utility provide all ancillary services associated with the utility's discounted

wholesale sales at the same prices and under the same terms as the services are provided to a third person; and

(5) must require that an electric utility provide all ancillary services associated with the utility's discounted wholesale sales to a third person on request.

(b) The commission shall adopt rules relating to the registration and reporting requirements of a qualifying facility, exempt wholesale generator, and power marketer.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.007. TARIFFS REQUIRED. (a) Except as provided by Subsection (b), an electric utility that owns or operates a transmission facility shall file a tariff in compliance with commission rules adopted under Section 35.006.

(b) An electric utility is not required to file a tariff under this section if the utility's terms for access and pricing for wholesale transmission service are included in another electric utility's tariff.

(c) An electric utility shall file a tariff required by this section with the appropriate state or federal regulatory agency having jurisdiction over the utility's transmission service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.008. ALTERNATIVE DISPUTE RESOLUTION. The commission may require that each party to a dispute concerning prices or terms of wholesale transmission service engage in a nonbinding alternative dispute resolution process before seeking resolution of the dispute by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.009. AMOUNTS PAID IN LIEU OF AD VALOREM TAXES FOR CERTAIN FACILITIES. A municipally owned utility that is required to apply for a certificate of public convenience and necessity to construct, install, or extend a transmission facility within ERCOT under Chapter 37 is entitled to recover, through the utility's wholesale transmission rate, reasonable payments made to a taxing entity in lieu of ad valorem taxes on that transmission facility,

provided that:

(1) the utility enters into a written agreement with the governing body of the taxing entity related to the payments;

(2) the amount paid is the same as the amount the utility would have to pay to the taxing entity on that transmission facility if the facility were subject to ad valorem taxation;

(3) the governing body of the taxing entity is not the governing body of the utility; and

(4) the utility provides the commission with a copy of the written agreement and any other information the commission considers necessary in relation to the agreement.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 2, eff. September 1, 2015.

Sec. 35.010. COSTS RELATED TO REPORTING ON SAFETY PROCESSES AND INSPECTIONS FOR CERTAIN UTILITIES. (a) This section applies only to a municipally owned utility or electric cooperative that has wholesale transmission rates established by the commission.

(b) Costs incurred by a municipally owned utility or electric cooperative to comply with Section 38.102 shall be recorded as a regulatory asset for timely recovery in wholesale transmission rates established by the commission.

(c) The commission may adopt rules relating to the recording of regulatory assets under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1320 (H.B. 4150), Sec. 2, eff. September 1, 2019.

## SUBCHAPTER B. EXEMPT WHOLESALE GENERATORS, DISTRIBUTED NATURAL GAS GENERATION FACILITIES, AND POWER MARKETERS

Sec. 35.031. AUTHORITY TO OPERATE. An exempt wholesale generator or power marketer may sell electric energy only at wholesale.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.032. COMMISSION REGISTRATION AND REQUIRED REPORTS.

(a) An exempt wholesale generator or power marketer that sells

electric energy in this state shall, not later than the 30th day after the date it becomes subject to this section:

(1) register with the commission; or

(2) provide to the commission proof that it has registered with the Federal Energy Regulatory Commission or has been authorized by the Federal Energy Regulatory Commission to sell electric energy at market-based rates.

(b) The exempt wholesale generator or power marketer may register by filing with the commission:

(1) a description of the location of any facility used to provide service;

(2) a description of the type of service provided;

(3) a copy of any information filed with the Federal Energy Regulatory Commission in connection with registration with that commission; and

(4) other information required by commission rule.

(c) An exempt wholesale generator or power marketer required to register under Subsection (a) shall file any report required by commission rule.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.033. AFFILIATE WHOLESALE PROVIDER. An affiliate of an electric utility may be an exempt wholesale generator or power marketer and may sell electric energy to its affiliated electric utility in accordance with laws governing wholesale sales of electric energy.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 19, eff. Sept. 1, 1999.

Sec. 35.034. TRANSFER OF ASSETS. (a) Unless an electric utility receives commission approval under Subsection (b), the utility may not sell or transfer a facility to an affiliate or otherwise consider the facility to be an eligible facility as defined by federal law if on May 27, 1995, the utility had a rate or charge in effect:

(1) for or in connection with the construction of the facility;

(2) for electric energy produced by the construction of the facility; or

(3) for electric energy produced by the facility other than a portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge.

(b) The commission, after notice and hearing, may allow an electric utility to sell or transfer a facility governed by Subsection (a) to an affiliate or otherwise allow the facility to become an eligible facility only if the transaction:

(1) will benefit ratepayers of the utility making the sale or transfer;

(2) is in the public interest; and

(3) otherwise complies with state law.

(c) For purposes of this section, "electric utility" does not include a river authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 20, eff. Sept. 1, 1999.

Sec. 35.035. VALUATION AND ACCOUNTING OF TRANSFERRED ASSETS. (a) A transfer of assets from an electric utility to an affiliated exempt wholesale generator or power marketer shall be valued at the greater of net book cost or fair market value.

(b) A transfer of assets from an exempt wholesale generator or power marketer to an affiliated electric utility shall be valued at the lesser of net book cost or fair market value.

(c) At the time that a transfer of assets between an electric utility and an affiliated exempt wholesale generator or power marketer is approved, the commission shall order the utility to adjust its rates so that the utility's tariffs reflect benefits from the proceeds of the sale and exclude any costs associated with the transferred facility.

(d) For purposes of this section, "electric utility" does not include a river authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 21, eff. Sept. 1, 1999.

Sec. 35.036. DISTRIBUTED NATURAL GAS GENERATION FACILITIES.

(a) A person who owns or operates a distributed natural gas generation facility may sell electric power generated by the facility. The electric utility, electric cooperative, or retail electric provider that provides retail electricity service to the facility may purchase electric power tendered to it by the owner or operator of the facility at a value agreed to by the electric utility, electric cooperative, or retail electric provider and the owner or operator of the facility. The value of the electric power may be based wholly or partly on the clearing price of energy at the time of day and at the location at which the electric power is made available to the electric grid.

(b) At the request of the owner or operator of the distributed natural gas generation facility, the electric utility or electric cooperative shall allow the owner or operator of the facility to use transmission and distribution facilities to transmit the electric power to another entity that is acceptable to the owner or operator in accordance with commission rules or a tariff approved by the Federal Energy Regulatory Commission.

(c) Subject to Subsections (e) and (f), if the owner or operator of a distributed natural gas generation facility requests to be interconnected to an electric utility or electric cooperative that does not have a transmission tariff approved by the Federal Energy Regulatory Commission, the electric utility or electric cooperative may recover from the owner or operator of the facility the reasonable costs of interconnecting the facility with the electric utility or electric cooperative that are necessary for and directly attributable to the interconnection of the facility.

(d) Subject to Subsections (e) and (f), an electric utility or electric cooperative may recover from the owner or operator of a distributed natural gas generation facility the reasonable costs of electric facility upgrades and improvements if:

(1) the rated capacity of the distributed natural gas generation facility is greater than the rated capacity of the electric utility or electric cooperative; and

(2) the costs are necessary for and directly attributable to accommodating the distributed natural gas generation facility's capacity.



(e) An electric utility or electric cooperative may recover costs under Subsection (c) or (d) only if:

(1) the electric utility or electric cooperative provides a written good faith cost estimate to the owner or operator of the distributed natural gas generation facility; and

(2) the owner or operator of the distributed natural gas generation facility agrees in writing to pay the reasonable and necessary costs of interconnection or capacity accommodation requested by the owner or operator and described in the estimate before the electric utility or electric cooperative incurs the costs.

(f) If an electric utility or electric cooperative seeks to recover from the owner or operator of a distributed natural gas generation facility an amount that exceeds the amount in the estimate provided under Subsection (e) by more than five percent, the commission shall resolve the dispute at the request of the owner or operator of the facility.

(g) A distributed natural gas generation facility must comply with emissions limitations established by the Texas Commission on Environmental Quality for a standard emissions permit for an electric generation facility unit installed after January 1, 1995.

(h) This section does not require an electric cooperative to transmit electricity to a retail point of delivery in the certificated service area of the electric cooperative if the electric cooperative has not adopted customer choice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 890 (S.B. [365](#)), Sec. 3, eff. September 1, 2011.

#### SUBCHAPTER C. QUALIFYING FACILITIES

Sec. 35.061. ENCOURAGEMENT OF ECONOMICAL PRODUCTION. The commission shall adopt and enforce rules to encourage the economical production of electric energy by qualifying facilities. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.062. APPLICATION FOR CERTIFICATION. (a) An

electric utility or a qualifying facility may submit to the commission for certification a copy of an agreement between the utility and facility for the purchase of capacity.

(b) An agreement submitted for certification under this section may provide that the agreement is contingent on certification by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.063. HEARING. (a) The commission, on its own motion or on the request of a party to the agreement or another affected person, may conduct a hearing on an agreement for which certification is sought under Section 35.062.

(b) A request for a hearing or a commission decision to hold a hearing must be made not later than the 90th day after the date the agreement is submitted to the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.064. CERTIFICATION STANDARDS. The commission shall certify an agreement submitted under Section 35.062 if the agreement:

(1) provides for payments over the contract term that are equal to or less than the electric utility's avoided costs, as established by the commission and in effect at the time the agreement was signed; and

(2) provides the electric utility the opportunity to acquire the cogeneration or small-power production installation before the installation is offered to another purchaser or provides other sufficient assurance that the electric utility will be provided with a comparable supply of electricity, if the qualifying facility ceases to operate the installation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.065. DEADLINES FOR COMMISSION ACTION. (a) Except as provided by Subsection (b), the commission shall make its determination regarding whether a certification should be granted under Section 35.064 not later than the 90th day after the date the agreement is submitted.

(b) If a hearing is held under Section 35.063, the commission shall make its determination regarding whether a certification should be granted not later than the 120th day after the date the agreement is submitted, except that this deadline is extended by two days for each day in excess of five days on which the commission conducts a hearing on the merits of the certification.

(c) If the commission does not make a determination by the date provided by Subsection (a) or (b), as applicable, the agreement is considered to meet the requirements of Section 35.064 and the certification is considered granted.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.066. TERM OF CERTIFICATION. A certification of an agreement granted under this subchapter is effective until the earlier of:

(1) the expiration date of the agreement; or

(2) the 15th anniversary of the date of the certification.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

#### SUBCHAPTER E. ELECTRIC ENERGY STORAGE

Sec. 35.151. ELECTRIC ENERGY STORAGE. This subchapter applies to electric energy storage equipment or facilities that are intended to provide energy or ancillary services at wholesale, including electric energy storage equipment or facilities listed on a power generation company's registration with the commission or, for an exempt wholesale generator, on the generator's registration with the Federal Energy Regulatory Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1069 (S.B. 943), Sec. 2, eff. September 1, 2011.

Sec. 35.152. GENERATION ASSETS. (a) Electric energy storage equipment or facilities that are intended to be used to sell energy or ancillary services at wholesale are generation assets.

(b) The owner or operator of electric energy storage equipment or facilities that are generation assets under Subsection

(a) is a power generation company and is required to register under Section [39.351\(a\)](#). The owner or operator of the equipment or facilities is entitled to:

- (1) interconnect the equipment or facilities;
- (2) obtain transmission service for the equipment or facilities; and
- (3) use the equipment or facilities to sell electricity or ancillary services at wholesale in a manner consistent with the provisions of this title and commission rules applicable to a power generation company or an exempt wholesale generator.

(c) Notwithstanding Subsection (a), this section does not affect a determination made by the commission in a final order issued before December 31, 2010.

(d) Subsection (b) does not require a municipally owned utility or an electric cooperative that owns or operates electric energy storage equipment or facilities described by Subsection (a) to register as a power generation company under Section [39.351\(a\)](#). Added by Acts 2011, 82nd Leg., R.S., Ch. 1069 (S.B. [943](#)), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 77 (S.B. [1012](#)), Sec. 1, eff. September 1, 2019.